



Solicitation (Revised May 17, 2018)

BID OPENING DATE: June 6, 2018 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23110	TITLE: Group 79000 – PROJECT LABOR AGREEMENT SERVICES (Statewide) Classification Codes: 77, 80, 84
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CONTRACT PERIOD: Five (5) years with renewal options for up to five (5) additional years

DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: harry.brown@ogs.ny.gov

Harry Brown Contract Management Specialist Telephone No. (518) 474-7902 E-mail address: harry.brown@ogs.ny.gov	Beverly Moore Team Leader Telephone No. (518) 486-2143 E-mail address: beverly.moore@ogs.ny.gov
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For MWBE Questions Only	For SDVOB Questions Only
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Email Address: MWBE@ogs.ny.gov	Email Address: VeteransDevelopment@ogs.ny.gov
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Anuola Surgick Phone: (518) 486-9284	Tryphina Ramsey Phone: (518) 486-9284	Anthony Tomaselli Phone No. (518) 474-2015
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For INSURANCE Questions Only

Email Address: ogs.sm.insrev@ogs.ny.gov

Leighann Brown	Telephone No. (518) 457-6595
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	FLASH DRIVE <input type="checkbox"/>	OTHER <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	CD/DVD <input type="checkbox"/>	SDHC CARD <input type="checkbox"/>	_____	Documented by: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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1. INTRODUCTION

1.1 Overview

This Solicitation is being issued by the New York State Office of General Services – Procurement Services (OGS). OGS is a New York State agency authorized by law to establish Centralized Contracts for use by NYS agencies and other Authorized Users, as that term is defined by State Finance Law § 163(1)(k). The purpose of this Solicitation is to establish Centralized Backdrop Contracts for Project Labor Agreement (PLA) Services to support Authorized Users' capital construction and design-build projects.

This Solicitation is a non-competitive establishment of multiple-award Centralized Backdrop Contracts. Contract awards shall be made to all responsive and responsible Bidders that meet all the terms and conditions outlined in this solicitation. Pricing proposed by Bidders in response to this Solicitation is a maximum-not-to-exceed Blended Rate that will not change during the life of the Contract, including all extensions. The actual price proposed to be charged for providing PLA Services will be determined by Awarded Contractors in response to a detailed Mini-bid (Mini-bid) Project Definition, as described below.

Backdrop Contracts have an established set of standardized terms and conditions, guidelines, processes and templates. When an Authorized User requires PLA Services, the Authorized User will issue a competitive Mini-bid in accordance with the terms and conditions of the Centralized Backdrop Contract and include any additional requirements. The Mini-bid will be distributed by the Authorized User to all Contractors. Contractors choosing to respond to the Mini-bid shall submit their actual proposed pricing, which shall not exceed their awarded Blended Rate. The Authorized User will then select Contractor based on the Mini-bid responses. Procurement instructions further describing the Mini-bid process and requirements for Authorized Users to purchase from the Centralized Backdrop Contracts are found in Section 6.14 – Procurement Instructions for Authorized Users and Appendix C – How to Use This Contract.

This Solicitation outlines the terms and conditions, and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. To ensure compliance with Bid requirements and prevent possible disqualification, a Bidder must follow the Bid Submission requirements set forth in Section 4.

The term of the Award will be five (5) years, with extension options, unless terminated earlier in accordance with the Contract. The State reserves the right to extend the contract under the same terms and conditions for additional time periods not to exceed a total contract term of ten (10) years.

1.2 Background

New York State Executive Order No. 49 (Gov. Pataki) and continued by Executive Order No. 2 (Gov. Andrew Cuomo) require State Agencies to establish procedures to consider whether to require PLAs on public construction projects. NYS Labor Law § 222 permits State and local governmental entities to require a contractor for a construction project to enter into a PLA. In order to make the decision as to whether or not to require a PLA, governmental entities typically rely on a study providing a labor and cost analysis to review the feasibility, economic benefits, and appropriateness of using a PLA on a construction project. Such analysis will include an examination of the project and the proposed (or negotiated) PLA, including a description of the project and its significance, cost, schedule, effect on the public, and any aspects unique to the project, such as its complexity or atypical cost or schedule. The examination of potential PLA economic benefits should cover, among other things; cost savings, schedule benefits, the potential for labor unrest, and overall consistency with the NYS Labor Law.

1.3 Scope

The State of New York seeks to establish Centralized Backdrop Contracts with responsive and responsible vendors to provide PLA Services. Contractors will provide an analysis of the labor market, work history, potential economic benefits and other relevant factors pertaining to utilizing a Project Labor Agreement in connection with appropriate capital construction and design-build projects for Authorized Users.

1.4 Estimated Quantities

No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractors must provide services actually ordered. There is no anticipated dollar value of the award for this Solicitation, as there is no historical data available. The individual value of each resultant Contract is indeterminate. OGS cannot predict the number of awards that Authorized Users will make for PLA services. See Appendix B, *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts*.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that any Contract resulting from this Solicitation will be made for only the quantity of services, if any, actually ordered during the Contract term.

1.5 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	April 13, 2018	N/A
Deadline for Submission of Intent to Bid	April 23, 2018	5:00 PM ET
Closing Date for Bidder Questions	May 4, 2018	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	May 18, 2018 (tentative)	N/A
Bid Opening / Due date for Bids	June 6, 2018 (revised)	11:00 AM ET
Contract Approval Date / Award Publish Date	August 17, 2018 (tentative)	N/A

1.6 Intent To Bid

A Bidder is requested to indicate its intent to bid by sending an email titled "INTENT TO BID- [BIDDER NAME]" to harry.brown@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The email should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary, and the failure to submit an intent to bid shall not preclude a company from bidding.

1.7 Bidder Questions

All questions regarding this Solicitation must be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to harry.brown@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

1.8 NYS Contract Reporter

Bidders must register with the *New York State Contract Reporter* (NYSCR) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. In order to receive email notifications regarding updates to the content or status of a particular ad, you must "bookmark the ad" on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select "send me notification updates" option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive notification updates regarding a particular ad, you will not receive email notifications regarding updates, including email notifications regarding the posting of the question and answer document and updates to Solicitation documents. Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

1.9 Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting on a governmental entity's website, in a newspaper of general circulation, or in the *New York State Contract Reporter* of the intent to solicit offers/Bids through final award and approval of the Contract by OGS ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation and in the *MWBE Designated Contacts* and *Insurance Designated Contacts* sections. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award, and, in the event of two such findings within a four-year period, the Bidder will be debarred from obtaining governmental procurement contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

1.10 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, *Definitions*, or as below.

"Bid Deviation" shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with, or offers an alternative to any term, condition, specification, or requirement of the Solicitation.

"Blended Rate" shall refer to an hourly rate that the Contractor shall charge for all personnel engaged in providing PLA Services. Typically, a blended rate is a single middle rate that lies between the higher hourly rate charged for senior (more experienced) personnel and the lower hourly rate charged for junior (less experienced) personnel.

"Business Day" shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

"Centralized Contract" shall mean a contract awarded as a result of this Solicitation. Centralized Contracts are also referred to as a back drop contract.

"Construction Industry" shall refer to the sector of national economy engaged in preparation of land construction, alteration, and repair of buildings, structures, and other real property.

"Mini-bid Agreement" shall refer to the resulting agreement from the competitive bidding of each Authorized User's Mini-bid Project Definition which is used to solicit bids from Centralized Contract holders, and is used as a basis for any resulting contract.

"Mini-bid Contract" shall refer to a contract awarded as the result of a mini-bid.

"Mini-bid Price" shall refer to the prices awarded for a Mini-bid agreement. A Mini-bid Price shall not exceed the Centralized Contract Blended Rate.

"Mini-bid Project Definition" shall refer to a bid document containing project specific bid specifications developed by or for an Authorized User which solicits bids from Contractors previously qualified under a Centralized back-drop contract.

"MWBE" shall refer to a business certified with NYS Empire State Development ("ESD") as a Minority- and/or Women-owned Business Enterprise.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“**Project Labor Agreement (PLA)**” shall refer to a pre-hire collective bargaining agreement between a Contractor and one or more trade labor organizations that establishes the terms and conditions of employment for one or more construction projects.

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

1.11 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (January 2014)

Appendix B – General Specifications (April 2016)

Appendix C – How To Use This Contract

Attachment 1 – Pricing

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Project Experience (Revised May 17, 2018)

1.12 Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation, including all appendices and attachments;
3. Appendix B, General Specifications;

2. BIDDER QUALIFICATIONS

Bidder is advised that the State’s intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of OGS that the firm has the necessary experience and that it can perform the work that will be required. OGS retains the right to request any additional information pertaining to the Bidder’s experience, ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

2. BIDDER QUALIFICATIONS (cont'd)

Bidder Qualifications:

1. A Bidder shall have completed at least three (3) economic feasibility studies for municipal, state, or federal agencies (or entities as deemed acceptable by OGS) on the prospects of using a PLA for a construction project and:
 - a) at least one (1) such **economic** feasibility study shall have been completed within the last 24 months prior to the Bid Opening/Due Date for this Solicitation;
 - b) at least one (1) **such economic feasibility study shall have been a** construction project **that** included civil construction work with a construction value of at least \$10 million dollars; **and**
 - c) a Bidder shall have experience drafting and negotiating PLAs on behalf of municipal, state, or federal agencies and at least one (1) such PLA shall have been executed by the relevant trade unions and **has** been made part of the contract documents for a construction project that is underway or has been completed.
2. A Bidder may provide more than the minimum qualifications to ensure that it is meeting minimum requirements.
3. A Bidder must list their relevant experience on Attachment 9 – *Project Experience* (attachment allows up to five (5) **entries**).

3. SERVICE REQUIREMENTS

3.1 Project Labor Agreement (PLA) Services:

In accordance with NYS Labor Law § 222 and relevant court decisions, in order to implement a PLA, an Authorized User must demonstrate a public purpose for entering into a PLA. Pursuant to Section 222, the Authorized User may require construction contractors awarded a contract for a project to enter into a PLA when it is part of the construction project's request for proposal or solicitation for bids and when the Authorized User determines that its interest in obtaining the best quality work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of costs savings advantages and any local history of labor unrest are best met by requiring a PLA. The services contemplated by this Solicitation generally involve the provision of economic feasibility analyses on the prospects of using a PLA for a specified project or a group of projects. These PLA studies will be detailed in a report that will typically include some combination of the following: construction and labor market analysis, evaluation of existing collective bargaining agreements, assessment of the expected economic benefits, overall conclusions and recommendations. In addition, if an Authorized User decides to require a PLA for a specified project or group of projects, the Authorized User may require the awarded Contractor to assist by drafting, negotiating, and delivering an executed PLA.

Awarded Contractors shall be able to provide the following services:

1. Coordinate with Authorized User for project initiation to review preliminary information available on the nature of the construction scope, schedule and budget, and review, on a preliminary basis, potential terms and conditions to be utilized in the analysis.
2. Conduct discussions to obtain input related to cost savings available for the project.
3. Evaluate the feasibility of a PLA for a project, considering economic and non-economic benefits.
4. Review the local labor environment considering experience in compliance with the enforcement of prevailing wage laws and other Authorized User requirements, and any labor conflicts or disruptions.
5. Analyze and prepare preliminary labor estimates for the project using conceptual project scope and conceptual project cost estimates developed by the Authorized User.

6. Analyze existing labor agreements applicable to the work and labor demands related to the project to determine the potential for cost savings through implementation of a PLA.
7. Analyze available data from other projects of similar scope that is applicable to the subject project. The analysis should also consider whether the project is a complex construction project where either costs or duration exceed those of typical projects.
8. Analyze and review potential concurrent construction projects with the potential to pull resources from the same labor pool.
9. Review the collective bargaining agreements of each of the trade unions that will be involved in the construction, with a focus on areas that could be standardized within the provisions of a proposed PLA.
10. Estimate the economic benefits, if any, that may be obtained by the use of a PLA in consideration of, among other things, (i) the potential for exemption from the Wicks Law and (ii) the benefits of standardized provisions, and (iii) terms and conditions that trade unions have agreed to on similar projects.
11. Consider the impact on, or potential for improved employment opportunities for Minority- and Women-Owned Businesses, Service-Disabled Veteran-Owned Businesses, and Disadvantaged Businesses.
12. Assess the non-economic benefits, if any, that may be obtained by the use of a PLA in consideration of, among other things:
 - a. The history of labor unrest/volatility in the local market to assess the potential for adverse cost and schedule impacts resulting from strikes, lockouts, or other job actions;
 - b. The potential for enhanced control of project schedule and contractor coordination;
 - c. The potential for enhanced security, stability, and work opportunities;
 - d. The potential for enhanced work force diversity and training opportunities for the community; and
 - e. Maximizing project safety conditions for workers and the public.
13. Prepare and deliver a report on the feasibility of requiring a PLA, documenting any projected cost savings, identifying specific non-economic benefits and recommendations for subsequent actions, if warranted. An Authorized user may request both draft and final versions of the report. The report shall include, but not be limited to, the following:
 - a. The estimated cost of the project.
 - b. The estimated time to complete the project.
 - c. An analysis of anticipated cost savings resulting from the proposed or anticipated PLA including an analysis of savings that may result from having uniform wages, overtime rates, shift differentials, work rules and practices across trades, among other things.
 - d. An analysis of specific contract cost savings, including savings in time and efficiency.
 - e. Documentation of how non-union contractors and out-of-state contractors may still participate in and bid upon the proposed projects.
 - f. Supporting data and documentation of research methodologies used by the Contractor
 - g. Documentation of consistency with Labor Law § 222 and relevant court decisions regarding the use of PLAs.
 - h. Any other appropriate topic arising out of the unique characteristics of the projects.
 - i. Any other aspects requested to be addressed by the Authorized User.
14. If the Authorized User makes a determination to require a PLA as part of the construction contract for a project or group of projects, the Contractor may be asked to draft, negotiate, and deliver an executed PLA. If a project is funded in whole or in part by federal funds, the PLA shall be in a form that permits the Authorized User to seek the concurrence of the applicable federal entity (e.g., Federal Highway Administration).

3.2 Confidential Information:

Awarded Contractors are advised that information regarding proposed construction projects that is provided by an Authorized User may be confidential. Contractors agree to keep confidential all project information identified as confidential by an Authorized User. An Authorized User may require awarded Contractors to execute a non-disclosure agreement.

3.3 Ineligibility to Provide Other Services:

Awarded Contractors are advised that the receipt of information regarding proposed construction projects may make them ineligible to provide construction, design, or other consulting services on such projects. In order to perform a feasibility study, a Contractor will typically receive non-public information about a proposed project. Possessing that non-public information may give the Contractor an unfair advantage (or the appearance of an unfair advantage) over bidders on the project that have received only public information. Therefore, before responding to an Authorized User's Mini-bid for PLA services, Contractors that provide a variety of construction-related services should consider whether they would prefer to provide PLA services or would prefer to remain eligible to bid on other aspects of the project.

3.4 Work Product:

Awarded Contractors must be able to provide reports in Word, Excel, PDF or another format acceptable to the Authorized User and be able to share documents with an Authorized User in electronic format via email or managed file transfer (for larger sized documents). All records produced by the Contractor shall be property of the Authorized User. Should the work between the Authorized User and the awarded Contractor be terminated, all records shall be turned over to the Authorized User or its designated recipient within a reasonable time period as specified by the Authorized User.

4. BID SUBMISSION**4.1 NYS Vendor File Registration**

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors that do business with New York State agencies, and the registration must be initiated by a State agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If a Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. The Bidder must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified on the first page of this Solicitation. OGS will initiate the vendor registration process for all Bidders. Once the process is initiated, registrants will receive an email identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:
http://www.osc.state.ny.us/vendor_management

4.2 Format and Content of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be rejected, except as provided by Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Email or facsimile Bid submissions are not acceptable.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to a CD or flash drive.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

Please note that in the case of discrepancies between paper copies and CD or flash drive submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

4.3 Administrative Contents of Bid Submission

An administrative proposal that does not provide all the information requested below may be subject to rejection. Your administrative proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete administrative proposal consists of ONE copy of each of the following:

1. CD or flash drive containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
 - c. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
 - d. Proof of compliance with Attachment 4 – Insurance Requirements;
 - e. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - f. Completed Attachment 6 – Bidder Submission Checklist (Excel);
 - g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - h. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF); and
 - i. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation with original ink signatures;
 - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
 - c. Completed Attachment 3 – Encouraging Use of NYS Businesses;
 - d. Proof of compliance with Attachment 4 – Insurance Requirements;
 - e. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - f. Completed Attachment 6 – Bidder Submission Checklist;
 - g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - h. Completed Form EEO100, Equal Employment Opportunity Staffing Plan; and
 - i. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).

4.4 Technical Contents of Bid Submission

A technical proposal that does not provide all the information requested below may be subject to rejection. Your technical proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete Technical Bid consists of ONE copy of the following:

1. CD or flash drive containing:
 - a. Completed Attachment 9 – Project Experience (Revised May 17, 2018) (Excel);
2. Original paper version of the following (to be placed in the loose-leaf binder and tabbed):
 - a. Completed Attachment 9 – Project Experience (Revised May 17, 2018)

4.5 Cost Content of Bid Submission

A cost proposal that does not provide all the information requested may be subject to rejection. Your cost proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete Cost Bid consists of ONE copy of the following:

1. CD or flash drive containing:
 - a. Completed Attachment 1 – Pricing for all Products offered in the Bid (Excel);

4.6 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (Solicitation #23110)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

4.7 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as noted in Section 1.5 ("Key Events/Dates") herein:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

4.8 Important Building Access Procedures

Bidders intending to hand-deliver their bid are advised that access to the Corning Tower is restricted. All visitors must check in in the Corning Tower lobby (below ground, on the Concourse level) by presenting photo identification at the security desk. Delays may occur due to a high volume of visitors. Visitors are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time, but delays may occur. Building access procedures may change or be modified at any time.

4.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – NYS Required Certifications) with its Bid.

4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if a Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidders are advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

4.11 Bid Opening Results

OGS Procurement Services posts Bid information on the OGS web page. The web page makes selected information available about the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://nyspro.ogs.ny.gov/nyspro-bid-openings>.

4.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

4.13 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;

- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information that OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with the next responsible Bidder, should OGS be unsuccessful in negotiating with the selected Bidder;
- U. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- V. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the proposed contract without processing a formal amendment and/or modification, and
- W. Award contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.14 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

4.15 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract. An Authorized User may require such guarantees at the mini-bid level.

5. METHOD OF AWARD

5.1 Method of Award

In accordance with New York State Finance Law Article 11, it is the intent of OGS to award a Centralized Contract for Project Labor Agreement Services (PLA) based on pass/fail criteria to all responsive and responsible Bidders who meet the minimum requirements established in this Solicitation and offer reasonable Not to Exceed Pricing (Blended Rate) (Attachment 1 – *Pricing*) as determined by OGS.

In accordance with State Finance Law, the pricing will be evaluated to determine the reasonableness of the maximum Not to Exceed Pricing offered. The reasonableness of the Not to Exceed Blended Rate shall be assessed in the following manner:

Step 1:

For all Bid offers, the *Not to Exceed Blended Rate* will be averaged to create an *Average Not to Exceed Blended Rate*. OGS reserves the right to remove an inordinately low or high bid from the calculation of the *Average Not to Exceed Blended Rate* if, in the judgment of OGS, the bid would skew the results.

Step 2:

Each Bidder’s *Not to Exceed Blended Rate* will be compared to the *Average Not to Exceed Blended Rate*. If a Bidder’s *Not to Exceed Blended Rate* is at or less than 150% of the *Average Not to Exceed Blended Rate*, the Bid offer shall be deemed acceptable.

Example (*Rates shown in chart are for demonstration purposes only.*):

Bidder Name	Not to Exceed Blended Rate (Hourly Rate)
Bidder A	\$150.00
Bidder B	\$165.00
Bidder C	\$130.00

Calculation:

$$\$150.00 + \$165.00 + \$130.00 = \$445.00 \text{ divided by } 3 = \$148.33$$

$$\$148.33 \text{ multiplied by } 150\% = \$222.50$$

Based on the calculations above, any *Blended Rate* at or below \$222.50 would be acceptable.

If a Bidder’s *Not to Exceed Blended Rate* is greater than 150% of the *Average Not to Exceed Blended Rate*, the pricing is disqualified, and the bidder’s complete bid offer shall be deemed to have failed and the whole bid offer will not be considered for an award.

5.2 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for services covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

5.3 Notification of Award

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contracts will be in effect for a term of five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for five (5) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

The Contractor shall not charge more than the Blended Rate. The Blended Rate will not change during the life of the Contract, including all extensions.

6.4 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Hourly Blended Rate
- Quantity
- Unit of Measure

- Dates of Service

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

6.5 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: www.sfs.ny.gov and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

6.6 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

6.7 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

6.8 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total hours billed to each Authorized User of this Contract, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract hours billed for this fractional period should be included in the quarterly report.

The report must also be submitted electronically via email in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

6.9 Contractor Requirements and Procedures For Participation By New York State Certified Minority- And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan
To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

- B. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 2. Separate forms shall be completed by Contractor and all subcontractors.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- C. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts
- Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
 2. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
 3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
 5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
 6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

6.10 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: https://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf 6.10

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: https://www.ogs.ny.gov/Core/SDVOBA.asp?sm_au_#iVVjF227tLtF4JJH

6.11 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

6.12 NYS Tax Law Section 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

6.13 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at (518) 474-6717.

6.14 Procurement Instructions for Authorized Users

The Backdrop Contracts have an established set of standardized terms and conditions, guidelines, processes and templates. When an Authorized User requires PLA Services, the Authorized User will issue a competitive Mini-bid in accordance with the terms and conditions of the Centralized Backdrop Contract and include any additional requirements. The Mini-bid will be distributed by the Authorized User to all Contractors.

Contractors choosing to respond to the Mini-bid shall submit their actual proposed pricing, which shall not exceed, but may be less than, their Blended Rate. The Authorized User will then select a Contractor based on the Mini-bid responses. Procurement instructions further describing the Mini-bid process and requirements for Authorized Users to purchase from the Centralized Backdrop Contracts are found in Appendix C – How to Use This Contract.

Authorized Users shall maintain a record of the Contractors they solicit for an Mini-bid. It is recommended the Authorized User save copies of all email correspondence to each of the Contractors for inclusion in their procurement record.

Contractor questions, clarifications, and/or disputes arising from an Authorized User's RFQ and/or Contractor selection are to be reviewed and resolved by the Authorized User and the Contractor, and not by NYS OGS.

All NYS Procurement Guidelines must be followed and the Authorized User's procurement record should clearly show why one Contractor was chosen over another.

6.15 Authorized User Reserved Rights

The Authorized User shall have all of the same reserved rights as the State, set forth in Section 4.13. In addition, to those reserved rights, the Authorized User shall have the following additional reserved rights:

- A. The right to add requirements to the Mini-bid and resulting Mini-bid Agreement between the Authorized User and the Contractor that are more advantageous than the terms and conditions established within the Contract;
- B. The right to require the Contractor to identify any subcontractors, and to approve such subcontractors;
- C. The right to request the Contractor's insurance policy language for purposes of substantiating compliance with Attachment 4 - Insurance Requirements, or such other Insurance Requirements, as required by the Authorized User as part of an Mini-bid;
- D. The right to conduct contract negotiations with the next responsible Contractor responding to an Mini-bid, should the Authorized User be unsuccessful in negotiating with the selected Contractor, and

- E After issuing a Purchase Order or PCard transaction to a Contractor in response to an Mini-bid, should that Contractor be unable to fulfill the terms of the engagement, an Authorized User may issue a Purchase Order or PCard transaction to another Contractor that responded to the original Mini-bid if the second Contractor is willing to provide the requested services at the price the first Contractor previously quoted.

Additional terms and conditions may be allowed as part of Contractor's response to an Authorized User's Mini-bid and incorporated into the Mini-bid Agreement between the Authorized User and the Contractor provided that all of the following conditions are met:

1. The Contractor identifies such terms and conditions in Contractor's response to the Authorized User's Mini-bid; and
2. Such terms and conditions do not contradict or violate any of the terms and conditions of the Contract, and/or are more advantageous to the Authorized User and the State than those set forth in the Contract; and
3. Such terms place no additional liability or responsibility on the Authorized User or the State; and
4. The Authorized User acknowledges in writing that it accepts such additional terms and conditions.

6.16 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

6.17 New Accounts

Contractor may ask State agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State agencies shall not be required to provide credit references.

6.18 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

6.19 Traffic Infractions

Neither the State nor Authorized Users shall be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

6.20 Employee Information Required To Be Reported By Certain Consultant Contractors And Service Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a State Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the State Agency awarding such Contracts, OSC, Division of Budget (DOB) and Department of Civil Service (CS). The effective date of these amendments was June 19, 2006. The requirements will apply to the covered Contracts awarded on and after such date. To meet these requirements, the Contractor agrees to complete:

- A. Form A - Contractor's Planned Employment Form**, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.

- B. Form B - Contractor’s Annual Employment Report.** Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:
1. Total number of Employees employed to provide the consultant services, by employment category.
 2. Total number of hours worked by such Employees.
 3. Total compensation paid to all Employees that performed consultant services under such Contract.*

***NOTE:** The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

<p>Department of Civil Service Alfred E. Smith State Office Building Albany, NY 12239</p>	<p>Office of the State Comptroller Bureau of Contracts 110 State St., 11th Floor Albany, New York Attn: Consultant Reporting Fax: (518) 474-8030 or (518) 473-8808</p>
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Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure. Further information is available in Section XI.18.C of the Office of the State Comptroller’s Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), “Consultant Disclosure Legislation.”

6.20.1 Instructions For Completing Form A and B

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller’s Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), “Consultant Disclosure Legislation,” and the following:

- A. Form A - Contractor’s Planned Employment Form** (available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)
- B. Form B - Contractor’s Annual Employment Report** (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>) \

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract. *(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

6.21 Travel, Meals and Lodging

When provided for in the Mini-bid and resultant Mini-bid Agreement, the Authorized Users may reimburse travel expenses. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be charged that exceeds these rates. All travel will be paid only as specified within the Mini-bid Agreement and must be billed with the associated services on the same Invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of a Mini-Bid Agreement. Parking fees and/or parking tickets shall not be paid by an Authorized User. Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.